

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Agents, Appointees, Attorneys and Deputies Guide (AAADG)

August 2009 amendment package

1. The Agents, Appointees, Attorneys and Deputies Guide is now the responsibility of the Decision Making and Appeals (Part of Legal Group) (DMA). This amendment package brings the guide up to date with current legislation.
2. This amendment package affects parts 4 and 5 and Appendix 2 .
3. This amendment package is issued in PDF format only,

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double-sided prints.

4. Copies of this amendment package can be purchased from Corporate Document Services (0113 399 4040). For DWP customers this will be chargeable to your own cost centre. You can also access the AAADG and individual amendment packages via the DWP website at www.dwp.gov.uk/advisers/index.asp.
5. The AAADG can be accessed on the DWP Intranet. On the homepage click "Delivery", "Benefit guidance", "DWP Forms and Guidance Gateway".
6. Remove the sheets in the left hand column and insert new sheets in the right hand column.

Remove

Part four - Attorney

4240– 4299 (4 pages)

Part five - Appointee

5300 – 5349 (1 page)

Appendices

Appendix 2 (2 pages)

Insert

Part four - Attorney

4240– 4299 (4 pages)

Part five - Appointee

5300 – 5349 (1 page)

Appendices

Appendix 2 – (2 pages)

Powers granted to an attorney

Full powers

4240 If the customer grants their attorney powers to manage their estate/affairs, the attorney receives full power on behalf of the customer to handle their business and financial affairs. This includes:

- making a new claim to Social Security benefits when there is no existing claim **or**
- making a claim for payment of Social Security benefits when there is an existing claim made by the customer and payment is due/already being made.

4241 - 4249

Specific powers

4250 If the customer grants their attorney specific powers, the powers may include the power to:

- make a claim for benefit **or**
- receive payment of benefit **or**
- both make a claim for and receive benefit.

For more information, see *Responsibilities of an attorney* in the Scotland section of this part of the guide.

4251 - 4259

Power of attorney granted for a limited period

4260 If a customer grants a PoA for a limited period, you must note the end date to make sure the customer's attorney is reviewed, ie to establish if the customer intends to extend the PoA.

4261 If the PoA is not extended beyond the expiry date, take action to end the attorney relationship. For more information, see *Ending an OP/COP relationship* in Part six of this guide.

4262 - 4269

Verifying the attorney is empowered

4270 If you receive a claim or enquiry from any person(s) or organization stating that they are the customer's attorney(s), ask to see the PoA document to verify that they have been granted PoA. If the PoA is dated on or after 2 April 2001 and the customer is mentally incapable or unable to communicate, the only acceptable evidence is a copy as returned by the Public Guardian together with his Certificate of Registration.

Photocopies

4271 You can accept a photocopy of the PoA document **provided** it includes a declaration that it is a true copy of the original signed by:

- the customer **or**
- a solicitor **or**
- a stockbroker.

For deeds registered in Scotland on or after 2 April 2001 they must bear the stamp of the OPG and have a certificate of registration.

4272 If the original deed is drawn up before 2 April 2001 and has been registered in the Books of Council and Session, a copy issued by the Registers of Scotland is acceptable provided it bears their official stamp.

Checking the power of attorney document is acceptable

4273 If the PoA was executed:

- **before** 1 August 1995, the customer **must** have signed the PoA document in front of two witnesses **or**
- **on** or **after** the 1 August 1995, the customer need only have signed the document in front of one witness.

4274 The Testing Clause (which appears above the signatures and after the words '**In witness whereof**')

- **must** include the:
 - full name and address of (both) witness(es) **and**
 - place and date of signing, and
- **may** contain the name of the customer, but may state only 'signed by me——'.

Acceptable wording for powers of attorney

4275 In all cases, make sure the PoA document includes one or more of the following acceptable forms of wording - note the distinction between those that only apply to the receiving of Social Security benefits and those that apply to both the receiving of **and the claiming of** Social Security benefits:

- these two clauses only extend to the receiving of, not the claiming of, Social Security benefits:
 - '——to receive and give valid receipt for any money or property due owing or belonging to me on any account whatsoever'
 - 'To demand and sue for enforce payment of and receive and give discharge for——all money and securities for money——and other personal estate whatsoever now belonging due owing or deliverable or hereafter to belong or to become due owing or deliverable to me ——'
- these five clauses extend to both the receiving of, and the claiming of, Social Security benefits:
 - 'with full powers to do everything which I could or can do myself, including without prejudice to the foregoing generality.'
 - 'Power——to execute and deliver documents of all kinds——and to manage my property of whatsoever kind and wheresoever situate'
 - '——with full power to my Attorney to act for me, either in my own name, or in the name of my Attorney and to do everything regarding my affairs and my estates,

heritable, movable, real and personal, of what kind so ever and wherever situate which I could have done myself if personally acting, and in particular, without prejudice to the foregoing generality——’

- ‘ ——with full power to do everything regarding my estate and affairs which I could do or could have done myself without limitation by reason of anything herein contained and without prejudice to the foregoing generality——’ **or**
- ‘ To claim and receive on my behalf all pensions, benefits, allowances, services, financial contributions, repayments, rebates, and the like, to which I may be entitled or for which I may be entitled to apply. To complete and submit all forms, give any necessary undertakings, make any relevant appeals and generally do anything else necessary or appropriate in connection therewith, and that as regards all periods past current or future.’

Power of Attorney document does not satisfy the Scottish requirement

4276 If you receive a PoA or a document which does not satisfy the wording requirements at paragraph 4276, it may still be legally valid. In these circumstances, a copy of the document should be taken and referred for advice to:

Information & Devolution Policy - Scotland

Room D311

Argyle House

Edinburgh

Fax: 0131 222 5364.

4277 - 4289

Two or more attorneys

Power of Attorney document allows attorneys to act separately

- 4290 If the customer appoints two or more attorneys jointly and the PoA document authorizes them to act separately, you can pay benefit to whichever attorney makes the application, provided the PoA document meets the other requirements. For more information about the other requirements, see *Verifying the attorney is empowered* in the Scotland section of this part of the guide.

Power of Attorney document does not allow attorneys to act separately

- 4291 If the customer appoints two or more attorneys jointly and the PoA document does not authorize them to act separately, any application must be made jointly and signed by all parties. All payments in respect of the customer must also be paid jointly to the attorneys.

Either attorney declines to act on the customer's behalf

- 4292 When the customer appoints two or more attorneys jointly and the PoA document does not authorize them to act separately, a problem arises if one or more then decline to act on the customer's behalf. You cannot make payment to only one attorney in such a joint attorneyship.

- 4293 In these circumstances:

- make payment direct to the customer **or**
- if the customer is mentally incapable, refer the case to the nominated/appropriate officer to consider appointee action. For information about authorizing an appointee, see *Appointee* in Part five of this guide.

4294 - 4299

Appointee needed but no one nominated

- 5300 If a visiting officer decides a customer needs an appointee but no one has been nominated, make attempts to identify a suitable person, e.g.:
- a spouse
 - a relative or close friend
 - an organization, e.g. a LA or AHA **or**
 - the proprietor of a CH/NH, but only if no other suitable person is found.
- 5301 If a suitable person is not available, the visiting officer must inform the customer's local social services and the relevant benefit section.
- 5302 If social services cannot help then as a last resort we will have to contact the OPG - 0845 330 2900. A court appointed deputy may be the only option.

Changing an appointee

Potential appointee nominated

- 5303 If the current appointee no longer wishes to act (NB: The withdrawal can be made by phone or in writing.) and nominates another person or organization to act, take the following action:
- suspend payment of benefit; unless benefit is being paid into the customer's own account, then arrange for the existing bank account details to be removed from CIS
 - begin BF56 action with the new prospective appointee
 - it is not always necessary to visit the customer unless there is a reason to do so. The prospective appointee should be interviewed and the form BF56 completed as normal. If the prospective appointee is already acting as an appointee, whether as an individual or corporate appointee, it is unlikely that a visit/interview will be required. But you will still need to ask them to complete a form BF56
 - Send a BF58 to the ex-appointee.
- 5304 As per step 2 of 5211 until such time that the new appointment is made you should not disclose any details about the customer's existing circumstances. Clearly the prospective appointee will be aware that benefit is being received and may be aware of much else about the customer but we should not add to that knowledge until the appointment is confirmed.

Appointee

5305 Once the appointment is confirmed then it may be useful, depending on the time the customer has already been on benefit, to undertake a full benefit review so that the appointee starts afresh. How this is done is up to each benefit but payment should not be delayed whilst whatever steps are taken.

No other appointee nominated

5306 Take the following action:

- suspend payment of benefit; unless benefit is being paid into the customer's own account, then arrange for the existing bank account details to be removed from CIS
- contact social services as a matter of urgency
- follow up with BF56 action as appropriate.
- send a BF58 to the ex-appointee.

Existing appointee claims another benefit

Where an existing appointee claims another benefit for the person he represents you must first confirm that he is the appointee before deciding the claim. There are three ways you can do this:

- i. Check CIS/CIS to confirm that he is the appointee for the other benefit. See below, but this should not be used in isolation without taking the further step of
- ii. Asking the existing benefit section if they have the BF56 to hand. If yes, ask for a copy to be sent. If not because it has been sent to Heywood then, finally,
- iii. Ask the appointee if he has his BF57.

If ii and iii are not available then, unless you have doubts about the veracity of his statement that he is the appointee or doubts about the said incapacity of the customer, you can use the CIS/CIS record as confirmation and decide and pay the claim accordingly. You must make a note of the steps taken to verify the appointeeship.

5307 - 5349

Part 2 – About you

Full name of individual or organisation

National Insurance (NI) number
(Individuals only)

Address

 Postcode

If any of the details in Parts 1 and 2 are incorrect, please let us know.

Important – Organisations must fill in the certificate in Part 4, or provide their representative with a similar letter of authority.

Part 3 – Important information

You are responsible for dealing with the

- social security benefits
- social security pensions
- social security allowances
- HM Revenue & Customs tax credits
- war disablement or war widows or widowers pensions

Any money that you receive on their behalf must be used in their and their dependant's best interest. **For example**

- paying their fees for a nursing or care home or carer
This includes the fees for social care services such as residence in a care home or support in their own home.
- towards meeting everyday living costs.

However, if they are in a nursing or care home, you must ensure that the specified amount of personal allowance is paid over each week for the benefit of the person named in **Part 1**.

You must tell the person's Department for Work and Pensions or HM Revenue & Customs office or the Service Personnel and Veterans Agency straight away if there is a change in the person's circumstances which could affect their benefit. A list of changes, which must be reported, is given in the notes issued with the first payment of benefit. If you do not have a copy of the list of changes you must report, you can get one from your social security or HM Revenue & Customs office or the Service Personnel and Veterans Agency.

Examples of changes you must tell us about are when the person

- changes address
- changes name
- has a child leaving school
- goes into or comes out of hospital, including coming out of hospital on leave
- becomes well enough to manage their own affairs
- intends to be absent from Great Britain for any period
- dies.

This list is not exhaustive.

■ Part 3 – Important information continued

If the person you named in **Part 1** dies, you must

- tell your Jobcentre Plus office, social security office, Pension Centre, HM Revenue & Customs office, or the Service Personnel and Veterans Agency straight away if their payments were being made direct into an account
- return any cheque payments you have for them

As an appointee you will also be responsible for letting us know if there are any changes in **your**

- name
- address
- contact number
- account details

If an overpayment happens

If an overpayment of benefit occurs, you may be required to repay the overpayment yourself depending on how the overpayment arose.

You will be responsible for repaying any overpayment of benefit that happened because you

- made an untrue or incorrect statement about yourself or the person named in **Part 1**
- failed to report a change in your own circumstances
- failed to report a change in the circumstance, which you knew about, in respect of the person named in **Part 1**
- failed to obtain relevant information about the circumstances of the person named in **Part 1**.

If you have been appointed by the Secretary of State (appointees only)

How long can I be an appointee?

You will be an appointee until

- the person you are an appointee for becomes well enough to manage their own affairs
- the person you are an appointee for dies, or
- you or the Department for Work and Pensions, HM Revenue & Customs or the Service Personnel and Veterans Agency decide to end the arrangement because it is not working properly
- you wish to end the arrangement because you no longer wish to continue as an appointee.

If you want to end the arrangement you must write to your Department for Work and Pensions, HM Revenue & Customs office or the Service Personnel and Veterans Agency, giving them at least one month's notice.

Additional information for organisations

All appointees are responsible for the collection and administration of the person's social security benefits, pensions and allowances, HM Revenue & Customs tax credits, and war pensions and allowances. If the organisation nominates a representative to carry out the appointee duties on their behalf, **the organisation** remains responsible for the management of the person's affairs. Organisations must therefore make any nominated representatives aware of their responsibilities to both the organisation and the person named at **Part 1**.

If you are acting as a representative within an organisation, there are some aspects that need to be considered in addition to those already mentioned. When quoting the appointee details, it is the organisation details that must be given and not those of an individual.

You will need to contact us if any of the following details change

- the organisation name
- the organisation address, including postcode
- phone and fax number
- the organisation ceases to exist, for example, a nursing or care home closes
- bank account details
- the named representative.

■ Part 4 – For organisations only

The bearer of this document is a representative of this organisation and is authorised to collect any benefits, pensions, allowances or credits in respect of the person named in **Part 1**.

Signature

Date

Positions in organisation

Name of organisation

Notes for the representative

If the payment is made direct into a bank or building society account the organisation must ensure that you are correctly authorised to make withdrawals on behalf of the customer and that bank procedures for making withdrawals are followed. Contact the bank or building society where the account is held for further details.